

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2010-13 as issued by Governor Brewer regarding notifying workers of exposure to hexavalent chromium. The Governor's Office authorized the notice to proceed through the rulemaking process on July 8, 2010. (See the text of the executive order at 16 A.A.R. 1183, July 2, 2010.) Additional rulemaking topics in this notice were reviewed per Laws 2010, Ch. 287, § 18. The Governor's Office authorized the notices to proceed through the rulemaking process as follows: safety standards for steel erection, August 19, 2010; standards for cranes and derricks, October 7, 2010. (See the text of § 18 on page 133.)

[R11-06]

PREAMBLE

1. Sections Affected

R20-5-601
R20-5-602

Rulemaking Action

Amend
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 23-405(4)

Implementing statute: A.R.S. § 23-410

3. A list of all previous notices appearing in the *Register* addressing the proposed rule:

Notice of Rulemaking Docket Opening: 16 A.A.R. 2121, November 5, 2010

Notice of Final Rulemaking: 17 A.A.R. 109, February 4, 2011 (*in this issue*)

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: William M. Wright, Assistant Director

Address: Division of Occupational Safety and Health
Industrial Commission of Arizona
800 W. Washington St., Suite 203
Phoenix, AZ 85007

Telephone: (602) 542-1695

Fax: (602) 542-1614

E-mail: wright.william.m@dol.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring state administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor, the Industrial Commission is amending R20-5-601 and R20-5-602, by incorporating by reference, amendments from 29 CFR 1926 Subpart Z and 29 CFR 1910 Subpart Z, Toxic and Hazardous Substances, as published in *Federal Register* 75 FR 126810-12686, March 17, 2010 and became a direct final rule effective June 15, 2010 and further amending R20-5-601, by incorporating by reference amendments from 29 CFR 1926 Subpart R, Steel Erection, published in the *Federal Register* 75 FR 27429, May 17, 2010 and 29 CFR 1926 Subpart CC, Cranes and Derricks in Construction, as published in the *Federal Register* 75 FR 47906 – 48177, August 9, 2010.

Notices of Proposed Rulemaking

The Hexavalent Chromium incorporation by reference specifically defines the employer's responsibility to notify workers of all Hexavalent Chromium exposure level monitoring results. The Steel Erection incorporation by reference is a non-mandatory technical amendment that provides information regarding Federal Highway Administration regulations that may apply to employers engaged in activities covered by OSHA's Steel Erection standard. The incorporation by reference of the Crane and Derrick in Construction standard is new and is found in Subpart CC.

- 6. A reference to any study relevant to the rules that the agency reviewed and proposes to either rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 8. The preliminary summary of the economic, small business, and consumer impact:**

The Federal Occupational Safety and Health Administration have determined that amendments to the Hexavalent Chromium and Steel Erection standards does not impose significant additional cost on any private or public sector entity, and does not meet any criteria for an economically significant or major rule specified by Executive Order 12866 and the relevant statutes. The new Crane and Derrick standard according to Federal OSHA economic analysis, is both economical and technically feasible for all employers both large and small. The economic impact on affected employers, in terms of cost versus revenues will range from 0.01 percent to 0.2 percent for the average-size employer. The reduction of employee crane and derrick fatalities, injuries and accidents will reduce operating expenses will result in improved bottom line financials for most employers.

- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: William M. Wright, Assistant Director
Address: Division of Occupational Safety and Health
Industrial Commission of Arizona
800 W. Washington St., Suite 203
Phoenix, AZ 85007
Telephone: (602) 542-1695
Fax: (602) 542-1614
E-mail: wright.william.m@dol.gov

- 10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

An oral proceeding has been scheduled as follows:

Date: March 9, 2011
Time: 9:00 a.m.
Location: Hearing Room A, first floor
Industrial Commission of Arizona
800 W. Washington St.
Phoenix, AZ 85007

The close of record is Wednesday, March 9, 2011, 5:00 p.m. A person may also submit written comments on the proposed rules no later than 5:00 p.m. Wednesday, March 9, 2011, to the individual listed in items 4 and 9.

- 11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

- 12. Incorporations by reference and their location in the rules:**

29 CFR 1910 The Federal Occupational Safety and Health Standards for General Industry, with amendments as of June 15, 2010. This incorporation by reference will appear in R20-5-602.

29 CFR 1926 The Federal Occupational Safety and Health Standards for Construction, with amendments as of August 9, 2010. This incorporation by reference will appear in R20-5-601.

- 13. The full text of the rules follows:**

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of ~~December 12, 2008~~, August 9, 2010, incorporated by reference. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after ~~December 12, 2008~~, August 9, 2010.

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of ~~November 10, 2009~~, June 15, 2010, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this rule shall not apply to those conditions and practices which are the subject of R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~November 10, 2009~~, June 15, 2010.